

Russell K. Ryan, #139835
MOTSCHIEDLER, MICHAELIDES, WISHON,
BREWER & RYAN, LLP
1690 West Shaw Avenue, Suite 200
Fresno, California 93711
Telephone (559) 439-4000
Facsimile (559) 439-5654

Attorneys for Plaintiff
JOHN PINHEIRO

FILED

AUG 12 2013

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

JOHN PINHEIRO,

Plaintiff,

v.

COUNTY OF FRESNO, JOHN
NAVARRETTE, an individual, BETH
BANDY, an individual, AMY RYALS, an
individual, RICHARD ST. MARIE, an
individual, and DOES 1 through 20,
inclusive,

Defendants.

Case No.:

13 CE CG 02526

VERIFIED COMPLAINT FOR
WRONGFUL TERMINATION,
RETALIATION UNDER LABOR
CODE SECTION 1102.5,
DEFAMATION, INVASION OF
PRIVACY – FALSE LIGHT,
INVASION OF PRIVACY –
INTRUSION, INVASION OF
PRIVACY – PUBLIC DISCLOSURE
OF PRIVATE FACTS, FAILURE TO
MAINTAIN RECORD PROPERLY,
IMPROPER DISCLOSURE OF
PERSONAL INFORMATION FROM
RECORD, INTENTIONAL
DISCLOSURE OF PERSONAL
INFORMATION FROM
GOVERNMENT RECORD,
VIOLATION OF LABOR CODE
SECTION 432.7, AND
INTENTIONAL AND NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS

Plaintiff John Pinheiro (“Mr. Pinheiro”) alleges against Defendants
County of Fresno (“County”), John Navarrette, Beth Bandy, Amy Ryals, Richard St.
Marie, and Does 1 through 20, as follows:

///

///

INTRODUCTION

1. This is an extraordinary case of improper conduct by Defendant County of Fresno and two officials at the highest level of County governance: County Administrative Officer John Navarrette and Director of Personnel Services Beth Bandy, as well as others directed by them. Navarrette and Bandy targeted Mr. Pinheiro for removal as the County's Labor Relations Manager after Mr. Pinheiro warned them of their illegal conduct in trying to break the Service Employees International Union ("SEIU") and unlawfully assisting the correctional officers to modify their bargaining unit, break away from the SEIU, and to either become independent or join with the Fresno Deputy Sheriff's Association ("FDSA").

2. The decision terminating Mr. Pinheiro's employment contains vague allegations and innuendos of Mr. Pinheiro allegedly lying about having an affair with County employee Vanessa Salazar (not a violation of County policy), allegedly lying about the number of personal cell phones he carried while at work (not a violation of County policy), an alleged failure to disclose the fact that he occasionally worked part-time at Club One Casino (not a violation of County policy), and the possible disclosure to Ms. Salazar of supposedly confidential personnel information, which did not happen. There were no grounds for Mr. Pinheiro's termination, and there is no basis for any of these grounds for termination. As part of this process the County, specifically the District Attorney's office, improperly disclosed arrest, citation and investigative records to Navarrette, Bandy, an outside investigator who—not coincidentally—is Navarrette's good friend and believed to be a drinking buddy, and others, who in turn disclosed these records to Mr. Pinheiro's brother and sister, a local union who represents County employees and the Fresno Bee, all to smear Mr. Pinheiro's reputation and induce him to resign in disgrace, which he refused to do.

3. The end result is that Mr. Pinheiro's employment, one of the most important positions at the County and where he had saved the County well in excess of \$10 million in savings through labor contract concessions during the great recession,

1 has now been terminated by the County at the direction of Navarrette and Bandy—who,
2 interestingly, had promised Mr. Pinheiro before the investigation even began that he
3 would be disciplined¹—and Mr. Pinheiro’s personal and professional reputations have
4 been destroyed and his relationships with his wife and family members significantly
5 harmed, perhaps beyond repair. What Mr. Pinheiro has unfortunately learned after
6 years of exemplary and loyal service to the County is that if you warn your supervisors
7 of illegal behavior—even if you are only attempting to protect your employer (in this
8 case, the County) from significant liability—those same people will find a way to
9 retaliate against you, destroy your personal and professional reputations, take away your
10 livelihood, defame you, and reveal the most intimate details of your personal life to the
11 public for all to see, and you will be powerless to stop them.

12 **GENERAL ALLEGATIONS**

13 4. Plaintiff John Pinheiro is an individual residing in the County of
14 Fresno, has been employed with the County since November 1, 2004 and, with the
15 exception of a several months in 2008-2009), has acted as its Labor Relations Manager
16 (chief spokesperson in labor negotiations and manager of the labor relations division)
17 since 2005. The position of Labor Relations Manager was reclassified as a Personnel
18 Services Manager in June 2012, although his duties did not change.

19 5. Defendant County of Fresno was and now is a political subdivision
20 duly organized and existing under the Constitution and the laws of the State of
21 California. The actions alleged against the County include not only County
22 administration but also the District Attorney’s office who improperly released records
23 of arrests, citations, and an investigation of a robbery in which Mr. Pinheiro was a
24 victim and not a suspect of illicit conduct, although accusations were made by
25 Navarrette, Bandy and others that the robbery occurred when Pinheiro was soliciting a
26

27
28 ¹Defendant Richard St. Marie made a similar promise during his interview with Mr. Pinheiro.

1 prostitute—completely untrue and absolutely discredited—but nevertheless used by the
2 Defendants as part of the campaign of defamation and to terminate his employment.

3 6. Defendant John Navarrette is an individual residing in the County
4 of Fresno, State of California and is the County’s Chief Administrative Officer.

5 7. Defendant Beth Bandy is an individual residing in the County of
6 Fresno, State of California and is the County’s Director of Personnel Services.

7 8. Defendant Amy Ryals is an individual residing in the County of
8 Fresno, State of California, and was employed in a low-level position with the County
9 until she made defamatory statements about Mr. Pinheiro and Vanessa Salazar (and was
10 used by Bandy as a tool in her effort to get Mr. Pinheiro fired), after which she was
11 promoted.

12 9. Defendant Richard St. Marie is an individual believed to be
13 residing in the County of Merced, State of California, and was selected by Navarrette to
14 do a partial, biased, and improper investigation to give the County “cover” to terminate
15 Mr. Pinheiro’s employment.

16 10. Plaintiff does not know the true names and capacities of the
17 defendants sued herein as Does 1 through 20, inclusive, and therefore sues these
18 defendants by such fictitious names. Plaintiff will seek leave of court to amend its
19 complaint to allege the true names and capacities of these defendants when the same has
20 been ascertained.

21 11. Plaintiff is informed and believes and thereon alleges that
22 Defendants, and each of them, were and are at all relevant times the agent, servant,
23 employee, partner, co-conspirator or principal of the other defendants, to the extent each
24 of these defendants was acting as the agent, servant, employee, partner or co-conspirator
25 of the other defendants, these defendants were acting within the scope of his, her, or its
26 authority.

27 ///

28 ///

1 **MR. PINHEIRO'S EMPLOYMENT WITH THE COUNTY**

2 12. Mr. Pinheiro was employed by the County in November 2004 and
3 has, with exception of several months during 2008-2009, has acted as its Labor
4 Relations Manager (chief spokesperson in labor negotiations and manager of the labor
5 relations division) since 2005.

6 13. Mr. Pinheiro performed exceptionally well as the County's Labor
7 Relations Manager and was regularly commended over the years by members of the
8 Board of Supervisors, and even Defendants Navarrette and Bandy, for his diligent and
9 faithful representation of the County in the extremely difficult job of negotiating with
10 the unions who represent more than 6,000 of the County's employees. He has been
11 known as tough and fair, and no one questioned his integrity or loyalty to the County.

12 14. In fact, Mr. Pinheiro's most recent evaluation by Bandy², which
13 covered the time period of December 2009 through December 2011 (and was provided
14 to him in February 2012), specifically states that he had done an "excellent job,"
15 specifically noting his integrity, loyalty and trustworthiness. He was highly praised for
16 a job well done during an extremely difficult time period resulting from the fiscal
17 downturn, and she concludes in the evaluation that "John has performed his duties and
18 responsibilities as Labor Relations Manager quite well. It is unfortunate that we are not
19 in a fiscal position to grant merit increases of Managers. *If we were, I would*
20 *recommend the maximum amount for John Pinheiro based on his accomplishments.*"
21 (emphasis added). Bandy also references in Mr. Pinheiro's evaluation that he "*is widely*
22 *trusted; is seen as a direct, truthful individual; can present the unvarnished truth in an*
23 *appropriate and helpful manner; keeps confidences; admits mistakes; is honest and*
24 *ethical; doesn't misrepresent himself for personal gain.*" (emphasis added) There had
25

26 ²Bandy had her own issues with Mr. Pinheiro, as she had been cool to him ever since there
27 were issues involving her brother who worked at Fresno Unified School District ("FUSD"),
28 where Mr. Pinheiro's brother works, and she has always suspected that Mr. Pinheiro's brother
played a role in that situation.

1 never been any issues with his employment performance (which, as detailed below,
2 requires termination for good cause pursuant to the County's personnel policies)
3 throughout his employment until the bogus investigation began in May 2012.

4 THE INVESTIGATION OF MR. PINHEIRO

5 15. In May 2012, only three months after Mr. Pinheiro's performance
6 evaluation was given to him by Bandy, Navarrette and Bandy initiated the investigation
7 of Mr. Pinheiro's alleged sexual harassment and workplace violence toward Ms.
8 Salazar, even though Ms. Salazar—*the alleged victim*—made no complaint and, in fact
9 adamantly denied the allegations. The "information" that purportedly prompted the
10 investigation came from County employee Amy Ryals—a close friend of Bandy's son
11 who went to high school with him, used to regularly "hang out" at Bandy's house, has
12 taken several classes that Bandy teaches at the Willow International Community
13 College Center, who unabashedly said to County employees that she "loves" and adores
14 Bandy—who, as noted above was used by Bandy to start the investigation of Mr.
15 Pinheiro.

16 16. Why did they want Mr. Pinheiro out? We now know that the
17 answer is that Navarrette and Bandy—allegedly taking direction from certain members
18 of the County Board of Supervisors³, who Navarrette represented to Mr. Pinheiro during
19 the SEIU strike in January 23-25, 2012 had promised him a raise to above \$200,000.00
20 per year and two additional years of service credit to "spike" his pension if he was
21 successful—was violating state and federal law by engaging in illegal efforts to break
22 the SEIU and secretly supporting an effort by the correctional officers unit (Unit 2) of
23 which Carlos Navarrette was a member, to modify their unit and eventually become part
24 of the Fresno Deputy Sheriff's Association where the compensation and benefits of
25 Carlos and his co-employees would eventually be higher and would benefit from
26

27 ³Navarrette bragged about keeping Supervisors Henry Perea and Susan Anderson "out of the
28 loop" on these discussions.

1 “sunset clauses” that were bargained with bargaining units 1, 14, and 35, which are
2 within the Sheriff’s Department.

3 17. Mr. Pinheiro expressly advised both Navarrette and Bandy from
4 that first conversation with Navarrette during the SEIU strike in late January through
5 May 2012 that the County must stay neutral, cannot interfere with SEIU’s efforts to
6 represent its members, and cannot illegally support the correctional officers in
7 separating from the SEIU or facilitate their acceptance into the FDOSA. In fact, an unfair
8 labor practice charge on these very issues was filed by the SEIU on May 22, 2012 and
9 amended on October 15, 2012 which references the very violations of state and federal
10 law that Mr. Pinheiro told Navarrette and Bandy they were committing and should stop.

11 18. It is obvious now (but unknown to Mr. Pinheiro at the time as he
12 thought he was simply doing his job) that Navarrette and Bandy did not want Mr.
13 Pinheiro standing in the way of their illegal efforts to break SEIU and assist the
14 correctional officers in leaving the SEIU, and as a result of his warnings and cautions
15 were looking for a way—any way—to get him out of the labor relations position.
16 Bandy had purportedly heard rumors for several years that Mr. Pinheiro might be
17 having an affair with Ms. Salazar and evidently decided to put that information to good
18 use.⁴ She induced Ms. Ryals to come forward in May 2012 with so-called
19 “information” regarding the alleged affair. Bandy did some investigatory work on her
20 own and also provided this information to Navarrette to commence a highly unusual and
21 unorthodox outside investigation of Mr. Pinheiro.

22 19. The investigation was not conducted by anyone in the County’s
23 human resources department or by an attorney or investigator skilled in workplace
24 investigations, but instead by Navarrette’s friend, Defendant Richard St. Marie (“**St.**
25 **Marie**”), a former County employee who now works for the Merced County Sheriff’s
26

27 ⁴Why this issue was the one worthy of investigation is unknown since the County does **not**
28 have a policy prohibiting employees from dating one another and many, many County
employees date each other, co-habit or are married.

1 Office in an administrative, non-investigative, capacity.⁵ Navarrette's instructions to St.
2 Marie were to conduct an "investigation" into a "potential situation" of sexual
3 harassment and workplace violence, the possibility of purported favoritism of Ms.
4 Salazar in light of the alleged relationship (even though there had been no reporting
5 relationship between the two for several years and Mr. Pinheiro could not do anything
6 to "favor" her) and any other evidence of misconduct by Mr. Pinheiro or Ms. Salazar
7 that could provide a basis for taking action against either one of them. In other words,
8 Navarrette already knew what the end result would be—a demotion or termination for
9 Mr. Pinheiro—so he gave *carte blanche* to St. Marie to investigate whatever he needed
10 to investigate to get the necessary evidence Navarrette could use against Mr. Pinheiro.

11 20. St. Marie's investigation—a witch-hunt in no uncertain terms—had
12 none of the earmarks of an objective inquiry into allegations of improper conduct as has
13 typical workplace investigations, but consisted primarily of accusatory questions and
14 statements, brow-beating witnesses like Mr. Pinheiro and Ms. Salazar, arguments with
15 them and other witnesses, a marked refusal to even listen to answers that did not support
16 his pre-determined conclusions, and findings completely unsupported by the evidence.
17 Even under these conditions, St. Marie could not conclude that sexual harassment or
18 workplace violence occurred. Instead, using suspicions and innuendo, he concluded
19 that Mr. Pinheiro and Ms. Salazar must be having an affair and were lying about it, that
20 they spent too much time on personal calls, had lied about the number of cell phones
21 they had and not knowing their cell phone numbers, and that Mr. Pinheiro must have
22 disclosed confidential information (which, in context, is remarkably benign) regarding
23 labor negotiations and/or personnel matters to Ms. Salazar. Similar factual findings
24 could have been made about Bandy or any number of employees in the County's
25 personnel department, but of course it was Mr. Pinheiro who was targeted.

26
27 ⁵There is no evidence to suggest that St. Marie had ever done any prior investigative work,
28 particularly a workplace investigation, and his manner of performing his assignment suggested
he had little or no idea what he was doing.

DEFAMATION AND PUBLICATION OF PRIVATE FACTS

21. Armed with allegations, innuendo and partial truths from St. Marie's so-called investigation, information from Bandy, and records and information regarding an arrest and citation in Mr. Pinheiro's background (in 1987 and 2001, well before his employment with the County) and records from an incident where Mr. Pinheiro was a victim of a robbery in July 2012 (all of which could have only been obtained from the County's District Attorney's office) Navarrette set up lunches and meetings with Mr. Pinheiro's brother (Helder Pinheiro, who works for Fresno Unified School District) and sister (Bernice Seidel, the clerk of the Board of Supervisors who was actually estranged from Mr. Pinheiro at the time and had spoken to him very little during the prior two years) in July and August 2012. During these meetings Navarrette told each of them that (1) Mr. Pinheiro was allegedly having an affair with Ms. Salazar; (2) Mr. Pinheiro had been arrested and/or cited for alleged solicitation or similar misconduct in 1987 (17 years before Mr. Pinheiro came to work for the County) and 2001 (three years prior to his employment); and (3) Mr. Pinheiro was engaging in similar conduct (he was not, but Navarrette and Bandy certainly suggested he was) at the time Mr. Pinheiro was a victim of a robbery in downtown Fresno in July 2012. Navarrette also made other defamatory statements about Mr. Pinheiro to Mr. Pinheiro's brother and sister.

22. Mr. Pinheiro's brother and sister were shocked about the information Navarrette shared about their brother, and even more shocked that the County's Administrative Officer would be disclosing such information (the results of an ongoing workplace investigation and non-public police records, some of which were more than 25 years old) with them. It was obvious that Navarrette was disclosing information from confidential county records, an ongoing investigation and other information that neither of them wanted to know about or could have properly accessed.

23. Navarrette asked Helder Pinheiro and Ms. Seidel to "talk" to their brother, let him know the incriminating information that Navarrette had about Mr.

1 Pinheiro, and convince him to accept a demotion or leave the County altogether to “save
2 his family” the embarrassment and shame of this incriminating information being
3 revealed to his wife and others. In other words, Navarrette was essentially trying to
4 extort Mr. Pinheiro into accepting a demotion or leaving the County or Navarrette
5 would make sure Mr. Pinheiro’s wife and others learned what he had uncovered during
6 the investigation.

7 24. Neither Helder Pinheiro nor Ms. Seidel wanted anything to do with
8 Navarrette’s plan and told him as much. Ms. Seidel told Navarrette that she was
9 estranged from her brother and she did not want to be involved or have her employment
10 or family impacted in any way. She also told him that from what she remembered that
11 Mr. Pinheiro’s job meant everything to him, he had in place detailed financial plans for
12 the future and fully intended to stay with the County until he was eligible for retirement.
13 Navarrette continued to press Helder Pinheiro and Ms. Seidel to intervene with Mr.
14 Pinheiro and talk to him about giving up his position as the Labor Relations Manager,
15 and in doing so, put Ms. Seidel in an extremely awkward situation, making her feel
16 uncomfortable and causing her to fear for her own job in the process.

17 25. Mr. Pinheiro was made aware of the ongoing investigations but
18 knew that he had done nothing wrong and resisted Navarrette’s efforts to demote him or
19 force him out of his position. The investigations were apparently finished sometime in
20 early August 2012 and a summary report was eventually provided to Navarrette and
21 Bandy. In the meantime, the same information and statements, including defamatory
22 statements, Navarrette made to Helder Pinheiro and Ms. Seidel were published by
23 Navarrette, Bandy, St. Marie and/or others at their direction to the local newspaper, the
24 Fresno Bee (who published a number of articles on the situation and re-published the
25 defamatory statements made by Navarrette as well as the improper disclosures of the
26 allegations contained in the District Attorneys records Navarrette had somehow
27 received) and to members of the public such as the representatives of the local SEIU.
28 This information even found itself in evidence in hearings at the Public Employee

1 Relations Board (the “**PERB**”) in Sacramento, California in hearings on unfair labor
2 practices filed by the SEIU against the County.

3 26. St. Marie conceded, despite great effort to find otherwise, that he
4 could not substantiate any claim of sexual harassment or workplace violence, nor could
5 he prove the alleged extramarital affair. But he was convinced of the affair, however,
6 that Mr. Pinheiro and Ms. Salazar were lying about it, and made an issue about whether
7 they were lying about the number of personal cell phones they carried, as if having
8 multiple phones were a violation of County policy. He also claimed the two of them
9 spent too much time on the phone on personal matters and Mr. Pinheiro may have
10 disclosed somewhat mundane confidential personnel matters to Ms. Salazar.

11 27. In spite of the lack of support for any material violation of any
12 County personnel rule or policy, Navarrette and Bandy chose to go through with their
13 prior decision to get Mr. Pinheiro out of the labor relations position. Since Mr. Pinheiro
14 would not accept Navarrette’s overtures for a demotion, they began the process to fire
15 him.

16 28. Remarkably, all of this was ongoing even as Mr. Pinheiro was in
17 the midst of sensitive, difficult negotiations with the SEIU, the Fresno County
18 Prosecutor’s Association and the California Nurses Association, with which he reached
19 an agreement favorable to the County establishing a roadmap for an agreement with
20 other unions representing County employees.

21 29. If Mr. Pinheiro was dishonest, not trustworthy, and had committed
22 serious violations of County policy sufficient to warrant termination, why would
23 Navarrette and Bandy have allowed him to continue to represent the County in such
24 sensitive negotiations and work? Again, the obvious answer is that Mr. Pinheiro’s
25 termination is not about his capability, honesty, loyalty or competency. It was about the
26 fact that he was in the way of the efforts of Navarrette (assisted by Bandy) to break the
27 SEIU, including helping the correctional officers break off from the SEIU and
28 eventually join the FDSA.

1 30. Bandy put Mr. Pinheiro on paid administrative time off (paid leave
2 usually awarded for extraordinary effort) for three days starting August 15, 2012. The
3 reason for doing so was that Mr. Pinheiro was preparing to be a witness at a hearing
4 scheduled August 16 and 17, 2012 before the NLRB on charges that the County
5 illegally implemented a bargaining agreement on the Fresno County Prosecutors
6 Association (Unit 30) prior to the end of 2011 to avoid new state laws requiring
7 enhanced fact-finding and bargaining requirements effective January 1, 2012. Bandy
8 knew that Mr. Pinheiro's testimony was not likely to be favorable to the County since
9 he knew the real reasons for forcing the agreement on Unit 30, and he certainly had no
10 motivation to "shade" his testimony to benefit the County (as Bandy had hoped, but Mr.
11 Pinheiro would not do, regardless of the circumstances), particularly since he knew that
12 he was being targeted by Bandy and Navarrette in the investigation. Mr. Pinheiro
13 remained willing to attend the hearing and testify, but Bandy insisted that the County's
14 attorney at the hearing, Che Johnson, move to "quash" Mr. Pinheiro's testimony.

15 31. On August 20, 2012, Navarrette called Mr. Pinheiro and extended
16 the Administrative Time Off. Mr. Pinheiro then received a letter from Bandy dated
17 August 22, 2012, changing the paid leave to administrative leave pending disciplinary
18 action. The timing of Mr. Pinheiro being placed on leave by Bandy, and then by
19 Navarrette, was clearly calculated to prevent Mr. Pinheiro from further involvement
20 with the County's ongoing negotiations and tactics against the various unions (even
21 though he had just successfully completed the negotiations and reached an agreement
22 with the California Nurse's Association) and ongoing proceedings and hearings on
23 unfair labor practices being filed and prosecuted against the County, since they knew
24 that Mr. Pinheiro had intimate knowledge and awareness of the County's ongoing
25 illegal conduct (primarily by Navarrette and Bandy) and had warned them of the
26 consequences of engaging in that illegal conduct. A *Skelly* hearing was eventually
27 conducted with regard to Mr. Pinheiro's employment termination, but it did not comport
28 with due process and did not afford Mr. Pinheiro the opportunity to present his side of

1 the story. The statements made on his behalf were discounted, not permitted to be
2 presented in their entirety, and it was obvious that the *Skelly* officer's mind was made
3 up well before the hearing was held.

4 32. An Order for Disciplinary Action ("**Order**") was served on Mr.
5 Pinheiro and his employment was terminated effective October 2, 2012, a true and
6 correct copy of which is attached as Exhibit A and incorporated by reference. The
7 Order is replete with untruths, half-truths, innuendo and suspicions, but little or nothing
8 in the way of actual facts that warrant the termination of his employment. It does not
9 set forth an act or incident that would be a ground for Mr. Pinheiro's firing, but instead
10 cites to purported evidences of a romantic relationship between Mr. Pinheiro and Ms.
11 Salazar (again, not a violation of County policy) and suggests that he is untrustworthy
12 because he would not come clean on the alleged affair, that he shared some minor
13 confidential personnel matters with Ms. Salazar (he did not), and lied about such
14 inconsequential issues such as having more than one cell phone (he did not lie about
15 that). Further, a number of facts upon which Mr. Pinheiro's termination is based
16 cannot, as a matter of law, even be a lawful reason to terminate his employment.

17 33. The County committed at least four legal errors in terminating Mr.
18 Pinheiro's employment: (1) it used police records and reports as part of the Order and
19 Mr. Pinheiro's termination that did not result in a criminal conviction; (2) the
20 investigation that formed the basis for the Order—and the only opportunity for Mr.
21 Pinheiro to respond to any allegations—did not afford Mr. Pinheiro the opportunity to
22 "correct or contradict" the vast majority of the allegations against him, a legal
23 requirement to terminate an employee for good cause; (3) the Order's factual (and
24 factually unsupported) premise that Mr. Pinheiro had an extramarital affair and lied
25 about it, is constitutionally protected and not prohibited by County policy; and (4) the
26 Order was based on "gossip, rumor [and] hearsay," which is legally prohibited from
27 being a basis for a good cause termination.

28 ///

34. The Order also contains numerous factual errors and unsupported allegations, as well as alleged behavior that is **not** a violation of any County policy, law, stated work rule or directive to Mr. Pinheiro. Many of the allegations against Mr. Pinheiro are alleged to have taken place well before Mr. Pinheiro received his final personnel evaluation, covering 2009 through 2011 and presented to him in February 2012, that was extremely positive in virtually every respect and referenced none of the alleged misbehavior Navarrette, Bandy and others claimed they knew about the alleged affair and “misconduct” for many years.

35. Mr. Pinheiro timely challenged the Order and a hearing was conducted before the County's Civil Service Commission on February 11-13, 15 and 28, 2013. Extensive briefing was conducted. The County's Civil Service Commission upheld the termination, but as of the filing of the complaint, nearly six months after the hearing, have not issued their findings of fact as required by ordinance (and which is the basis upon which Pinheiro can challenge his termination through the filing of a petition for administrative mandamus), so Mr. Pinheiro has exhausted his administrative remedies to the extent they have been available to him, unless otherwise waived or excused.

36. Mr. Pinheiro has exhausted all internal grievance procedures and filed an appropriate claim under Government Code §910, et seq., which was rejected by the County.

FIRST CAUSE OF ACTION

(Wrongful Termination – County of Fresno)

37. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1 through 36, inclusive, as though fully set forth herein.

38. Pursuant to the Fresno County Personnel Rules, specifically Rule 10, Mr. Pinheiro as a County employee on “permanent status in classified service” could only be terminated for cause as provided for in Rule 10, specifically the reasons set forth in Section 10060.

1 39. In order for the County to have properly terminated Mr. Pinheiro's
2 employment, there are three factual determination that must have been made: (1) that
3 the County acted in *good faith* in deciding to terminate the employee; (2) *the decision*
4 *followed an adequate investigation*; and (3) the employer had *reasonable grounds* for
5 believing the charges against the employee were true. *Silva v. Lucky Stores, Inc.*, 65
6 Cal.App.4th 256, 264 (1998). *Gossip, rumor and* hearsay charges against an employee
7 do not constitute "substantial" evidence of those charges and cannot be the factual
8 support to terminate an employee for good cause. *Id.*

9 40. Further, California Labor Code §432.7 (a) specifically prohibits
10 "any employer" from using arrest or detention records "as a factor" in any "condition of
11 employment," specifically referencing "termination." Precedent and statute are clear
12 that an arrest, by itself, is not reliable evidence that a person has actually committed a
13 crime.

14 41. Further, absent express policies regarding non-fraternization, an
15 individual's right of privacy recognized by the California Constitution is considered an
16 "inalienable" constitution right and "applies to sexual relations outside of marriage."
17 *Rider v. Superior Court*, 199 Cal.App.3d 278, 282 (1988); *Barrenda L. v. Superior*
18 *Court*, 65 Cal.App.4th 794, 800 (1998) (the right of privacy in the California constitution
19 "protects both the marital relationship and the sexual lives of the unmarried" as an
20 "inalienable right on a par with defending life and possession property. California's
21 privacy protection similarly embraces sexual relations") (citations omitted); *McLain v.*
22 *Great American Insurance Companies, et al.*, 208 Cal.App.3d 1476, 1487 (1989) (court
23 properly excluded evidence regarding certain sexual behavior on the part of the
24 employee because it was irrelevant to the employee's termination and could potentially
25 be prejudicial, confusing and misleading).

26 42. Mr. Pinheiro's employment termination was improper and
27 wrongful because: (a) the County did not act in good faith following a reasonable
28 investigation and did not have a substantial basis in making the decision to terminate

1 Mr. Pinheiro; (b) the termination was based primarily on evidence and information
2 amounting to gossip, speculation and innuendo, which cannot be the basis for a good
3 cause termination; (c) the termination was based, at least in part, arrest or detention
4 records, which Labor Code §432.7 specifically prohibits; (d) the County based the
5 termination, at least in part, on its belief that Mr. Pinheiro was having a sexual affair
6 with another employee during work and/or lied about having an affair, either of which
7 cannot be good cause for the termination of his employment as a matter of law.

8 43. Defendants' actions as described above constitute wrongful
9 termination of Mr. Pinheiro's employment. As a proximate result thereof, Plaintiff
10 suffered and continues to suffer substantial losses and lost earnings, bonuses, deferred
11 compensation and other employment benefits in an amount according to proof, but
12 believed to be in excess of \$3,500,000.00.

13 44. As a further proximate result of Defendants' wrongful termination,
14 Plaintiff has suffered and will continue to suffer severe emotional and mental distress
15 including, without limitation, humiliation, embarrassment, anxiety, sleeplessness and
16 other psychological damage in an amount according to proof.

17 45. Code of Civil Procedure §1021 provides that attorneys fees are
18 recoverable in an action for which they are specifically provided by statute. Applicable
19 statutes, including Labor Code §218.5 and related statutes as detailed below, provides
20 that reasonable attorneys fees and costs are recoverable by the prevailing party. As a
21 result of Defendants' actions, Mr. Pinheiro has been forced to retain the law offices of
22 Motschiedler, Michaelides, Wishon, Brewer & Ryan, LLP to prosecute this action.
23 Plaintiff has incurred and will continue to incur reasonable attorneys fees in prosecuting
24 this action.

25 WHEREFORE, Plaintiff prays for relief as set forth below.

26 ///

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **(Retaliation – Labor Code §1102.5 - County)**

3 46. Plaintiff incorporates the allegations set forth in paragraphs 1
4 through 45, inclusive as though fully set forth herein.

5 47. Section 1102.5 of the California Labor Code prohibits employers
6 from (1) making, adopting or enforcing any rule, regulation or policy preventing an
7 employee from disclosing information regarding violation of state or federal law to any
8 government or law enforcement agency; (2) retaliating against an employee for
9 disclosing information regarding violation of state or federal law to a government or law
10 enforcement agency; and (3) retaliating against an employee for refusing to participate
11 in an activity that would result in violation of federal or state law.

12 48. As detailed above, Mr. Pinheiro told Navarrette and Bandy that
13 they, and the County as a result, were violating state and federal law (including
14 provisions of the National Labor Relations Act and the Public Employee Relations Act)
15 by engaging in illegal efforts to break the SEIU and secretly supporting an effort by the
16 correctional officers unit (Unit 2) of which Navarrette's son, Carlos, was a member, to
17 modify their unit and eventually become part of the Fresno Deputy Sheriff's
18 Association where the compensation and benefits of Carlos and his co-employees would
19 eventually be higher and would benefit from "sunset clauses" that were bargained with
20 bargaining units 1, 14, and 35, which are within the Sheriff's Department.

21 49. Mr. Pinheiro expressly advised both Navarrette and Bandy from
22 that first conversation with Navarrette during the SEIU strike in late January through
23 May 2012 that the County must stay neutral, cannot interfere with SEIU's efforts to
24 represent its members, and cannot illegally support the correctional officers in
25 separating from the SEIU or facilitate their acceptance into the FDSA. In fact, an unfair
26 labor practice charge on these very issues was filed by the SEIU on May 22, 2012 and
27 amended on October 15, 2012 which references the very violations of state and federal
28 law that Mr. Pinheiro told Navarrette and Bandy they were committing and should stop.

1 50. It is obvious now (but unknown to Mr. Pinheiro at the time as he
2 thought he was simply doing his job) that Navarrette and Bandy did not want Mr.
3 Pinheiro standing in the way of their illegal efforts to break SEIU and assist the
4 correctional officers in leaving the SEIU, and as a result of his warnings and cautions
5 were looking for a way—any way—to get him out of the labor relations position.
6 Bandy had purportedly heard rumors for several years that Mr. Pinheiro might be
7 having an affair with Ms. Salazar and evidently decided to put that information to good
8 use.⁶ She induced Ms. Ryals to come forward in May 2012 with so-called
9 “information” regarding the alleged affair. Bandy did some investigatory work on her
10 own and also provided this information to Navarrette to commence a highly unusual and
11 unorthodox outside investigation of Mr. Pinheiro.

12 51. As a result of these disclosures and statements to the County,
13 specifically, Navarrette and Bandy, Plaintiff was retaliated against as set forth above in
14 violation of Labor Code §1102.5(b) and (c). Plaintiff’s complaints regarding these
15 issues were the primary and proximate reasons for his termination.

16 52. As a proximate result of Defendants’ violations of Labor Code
17 §1102.5 against Plaintiff, Plaintiff was retaliated against and terminated, and has
18 suffered and continues to suffer substantial losses in lost earnings, bonuses, deferred
19 compensation and other employment benefits in an amount according to proof, but
20 believed to be in excess of \$3,500,000.00.

21 53. As a further result, Plaintiff has been required to obtain the services
22 of law firm of Motschiedler, Michaelides, Wishon, Brewer & Ryan, LLP, and incur
23 attorneys fees to prosecute this matter. Plaintiff is therefore entitled to attorneys fees
24 pursuant to Labor Code §218.5.

25 WHEREFORE, Plaintiff prays for relief as set forth below.

26 _____
27 ⁶Why this issue was the one worthy of investigation is unknown since the County does **not**
28 have a policy prohibiting employees from dating one another and many, many County
employees date each other, co-habit or are married.

1 **THIRD CAUSE OF ACTION**
2 **(Defamation - All Defendants)**

3 54. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1
4 through 53, inclusive as though fully set forth herein.

5 55. During the relevant time periods identified above, and as
6 discovered by Mr. Pinheiro following the time he was placed on administrative leave
7 while the County contemplated disciplinary action against him, the Defendants, and
8 each of them, made numerous false and untrue statements regarding Mr. Pinheiro.
9 These false and untrue statements, some of which were oral, others were written, and
10 still others both oral and written include, but are not limited to, the following:

11 a. Mr. Pinheiro was having a sexual affair with Ms. Salazar at
12 work—and in fact had been having one for years (all Defendants);

13 b. Mr. Pinheiro shoplifted from fast food restaurants located
14 near the County building (County, Navarrette, Bandy and St. Marie);

15 c. Mr. Pinheiro was soliciting, or attempting to solicit, a
16 prostitute when he was the victim of a robbery in July 2012 (County, Navarrette and
17 Bandy);

18 d. Mr. Pinheiro was convicted of engaging prostitutes in 1987
19 and 2001 and was convicted of crimes of solicitation during those time periods (County,
20 Navarrette, Bandy and St. Marie);

21 e. Mr. Pinheiro was sharing confidential personnel information
22 to Ms. Salazar (Ryals and Bandy);

23 f. Mr. Pinheiro made threatening statements and/or gestures to
24 Ryals which caused her to fear for her safety (Ryals, Bandy and St. Marie);

25 g. Mr. Pinheiro has physically hit or punched Salazar and was
26 the perpetrator of domestic violence against her (Ryals and Bandy); and

27 h. Other comments similar to those described above.

28 ///

1 56. The statements set forth in the preceding paragraph are false.
2 Defendants published these statements to third parties, including family members of Mr.
3 Pinheiro, SEIU representatives, law enforcement, the general public and the local
4 media, including The Fresno Bee. These statements were made for the purpose of
5 damaging Mr. Pinheiro's personal and professional reputations in the community (and
6 to justify its wrongful termination of Mr. Pinheiro's employment), his relationships with
7 existing and prospective business associates and employers and did indeed cause such
8 damage to his personal and professional reputation in the community.

9 57. The statements of defendants were libelous and slanderous *per se*
10 and were understood by those who heard them in a way that defamed Mr. Pinheiro in
11 his business and employment activities, because each of the statements impugned, or
12 had a natural tendency to discredit, his reputation in the local business community,
13 integrity in the community and put Mr. Pinheiro in a false light with prospective
14 employers and other third parties.

15 58. As a proximate result of the above-described conduct, Mr. Pinheiro
16 has and will suffer general damages to his reputation in an amount that has not yet been
17 ascertained but is believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for
18 relief to amend this complaint to allege the true amount when the same has been
19 ascertained.

20 59. In doing the acts alleged above, the individual Defendants acted
21 intentionally and with improper motives. For these reasons, their actions were
22 oppressive, outrageous, willful, malicious and uttered and published with a reckless
23 disregard for their possible result so as to justify an award of punitive damages against
24 each of the individual defendants.

25 WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Invasion of Privacy – False Light – All Defendants)**

3 60. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1
4 through 59, inclusive as though fully set forth herein.

5 61. During the relevant time periods identified above, and as
6 discovered by Mr. Pinheiro following the time he was placed on administrative leave
7 while the County contemplated disciplinary action against him, the defendants, and each
8 of them, made numerous false and untrue statements regarding Mr. Pinheiro. These
9 false and untrue statements, some of which were oral, others were written, and still
10 others both oral and written include, but are not limited to, the following:

11 a. Mr. Pinheiro was having a sexual affair with Ms. Salazar at
12 work—in fact having had one for years (all Defendants);

13 b. Mr. Pinheiro shoplifted from fast food restaurants located
14 near the County building (County, Navarrette, Bandy and St. Marie);

15 c. Mr. Pinheiro was soliciting, or attempting to solicit, a
16 prostitute when he was the victim of a robbery in July 2012 (County, Navarrette and
17 Bandy);

18 d. Mr. Pinheiro was convicted of engaging prostitutes in 1987
19 and 2001 and was convicted of crimes of solicitation during those time periods (County,
20 Navarrette, Bandy and St. Marie);

21 e. Mr. Pinheiro was sharing confidential personnel information
22 to Ms. Salazar (Ryals and Bandy);

23 f. Mr. Pinheiro made threatening statements and/or gestures to
24 Ryals which caused her to fear for her safety (Ryals, Bandy and St. Marie);

25 g. Mr. Pinheiro has physically hit or punched Salazar and was
26 the perpetrator of domestic violence against her (Ryals and Bandy); and

27 h. Other comments similar to those described above.

28 ///

1 62. Defendants knew, or should have known, that such statements
2 would be communicated to the public in general, and in fact were published to the
3 general public through statements and articles in the local media, including The Fresno
4 Bee. These statements, which constitute an unwarranted and unlawful invasion of
5 privacy, created an unfair, false and inaccurate depiction of Mr. Pinheiro, placed Mr.
6 Pinheiro in a false light to a large number of third persons (including Mr. Pinheiro's
7 family) and to the general community. In doing so, the defendants negligently,
8 recklessly, and intentionally caused these publications to occur to portray Mr. Pinheiro
9 in this false light and for the purpose of damaging Mr. Pinheiro's personal and
10 professional reputations in the community (and to justify its wrongful termination of
11 Mr. Pinheiro's employment), his relationships with existing and prospective business
12 associates and employers and did indeed cause such damage to his personal and
13 professional reputation in the community.

14 63. As a proximate result of the above-described conduct, Mr.
15 Pinheiro has and will suffer damages in an amount that has not yet been ascertained but
16 is believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for relief to amend this
17 complaint to allege the true amount when the same has been ascertained.

18 64. In doing the acts alleged above, the individual defendants acted
19 intentionally and with improper motives. For these reasons, their actions were
20 oppressive, outrageous, willful, malicious and uttered and published with a reckless
21 disregard for their possible result so as to justify an award of punitive damages against
22 each of the individual defendants.

23 WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

24 **FIFTH CAUSE OF ACTION**

25 **(Invasion of Privacy – Intrusion – County, Navarrette, Bandy and St. Marie)**

26 65. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1
27 through 64, inclusive as though fully set forth herein.

28 ///

1 66. During the relevant time periods identified above, and as
2 discovered by Mr. Pinheiro following the time he was placed on administrative leave
3 while the County contemplated disciplinary action against him, the County (both the
4 administrative offices and the District Attorney's offices), Navarrette, St. Marie and
5 Bandy intentionally and without consent intruded into the private and confidential
6 information about Mr. Pinheiro from his personnel records and other confidential
7 records maintained by the County, including records of investigation, citation and arrest
8 maintained by the District Attorney's office (as well as improperly obtaining
9 investigative records from the City of Fresno police department) which are not for
10 public viewing or consumption. These defendants, without the consent and against Mr.
11 Pinheiro's interest, disclosed the private and confidential information to Mr. Pinheiro's
12 family members, the public and the local media, including The Fresno Bee. Such
13 actions constitute an unwarranted and unlawful invasion of privacy.

14 67. Mr. Pinheiro had an objectively reasonable expectation that this
15 personal, private and confidential information would remain so and not be disclosed or
16 used against Plaintiff (in his employment or anywhere else) without his consent.

17 68. Defendants knew, or should have known, that such information
18 should have remained private and not used against Mr. Pinheiro for any purpose or
19 disseminated to the media, the public, or even to Mr. Pinheiro's family members.

20 69. As a proximate result of the above-described conduct, Mr.
21 Pinheiro has and will suffer general damages in an amount that has not yet been
22 ascertained but is believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for
23 relief to amend this complaint to allege the true amount when the same has been
24 ascertained.

25 70. In doing the acts alleged above, the individual defendants acted
26 intentionally and with improper motives. For these reasons, their actions were
27 oppressive, outrageous, willful, malicious and uttered and published with a reckless

28 ///

disregard for their possible result so as to justify an award of punitive damages against each of the individual defendants.

WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

SIXTH CAUSE OF ACTION

(Invasion of Privacy – Public Disclosure of Private Facts– County, Navarrette, Bandy, St. Marie)

71. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1 through 70, inclusive as though fully set forth herein.

72. During the relevant time periods identified above, and as discovered by Mr. Pinheiro following the time he was placed on administrative leave while the County contemplated disciplinary action against him, the defendants, and each of them, publicly disclosed private facts about Mr. Pinheiro to his family members, employees he worked with, the public and the local media, including The Fresno Bee. The private facts that were disclosed included, but were not necessarily limited to, personnel records, arrest records, investigation records from government sources, including the County, the contents of investigative reports from the City and County, and the assertion that claims were made against Mr. Pinheiro that:

a. Mr. Pinheiro shoplifted from fast food restaurants located near the County building;

b. Mr. Pinheiro was soliciting, or attempting to solicit, a prostitute when he was the victim or a robbery in July 2012; and

c. Mr. Pinheiro was arrested and/or given a citation for solicitation or loitering in 1987 and 2001

73. Defendants knowingly shared such private facts with Mr. Pinheiro's family members, the local media and the public. These disclosures would be highly offensive and objectionable to the reasonable person and were committed recklessly, maliciously, fraudulently oppressively and with the wrongful intent of

///

1 injuring Mr. Pinheiro. The defendants identified in this cause of action authorized,
2 ratified and approved these unlawful disclosures.

3 74. As a proximate result of the above-described conduct, Mr.
4 Pinheiro has and will suffer general damages in an amount that has not yet been
5 ascertained but is believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for
6 relief to amend this complaint to allege the true amount when the same has been
7 ascertained.

8 75. In doing the acts alleged above, the individual defendants acted
9 intentionally and with improper motives. For these reasons, their actions were
10 oppressive, outrageous, willful, malicious and uttered and published with a reckless
11 disregard for their possible result so as to justify an award of punitive damages against
12 each of the individual defendants.

13 WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

14 **SEVENTH CAUSE OF ACTION**

15 **(Failure to Maintain Record Properly – Civil Code Section 1798.45 – County)**

16 76. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1
17 through 75, inclusive as though fully set forth herein.

18 77. During the relevant time periods, the County as a political
19 subdivision of the State of California which maintains an Office of the District
20 Attorney, is charged with the enforcement of law and order. Such records maintained
21 by the county include arrest records, investigation records relating to allegations and
22 claims of criminal and civil misconduct and other such records. It also obtains records
23 from other law enforcement agencies such as the City of Fresno in connection with the
24 County's ongoing investigations, which contain private information.

25 78. The County failed to properly records in its possession pertaining
26 to Mr. Pinheiro inasmuch it provided arrest, citation and investigative records in its
27 possession regarding Mr. Pinheiro to Navarrette, Bandy and St. Marie without proper
28 legal authorization, a legal basis, or consent from Mr. Pinheiro. Navarrette, Bandy and

1 St. Marie had no legitimate interest in that information and thereafter disclosed it to Mr.
2 Pinheiro's family members, the public and the local media.

3 79. As a result of these improper disclosures and failure to properly
4 maintain these records, and its dissemination of this information outside of government
5 without verifying its accuracy, Mr. Pinheiro was denied fairness in an official
6 determination based on these records, including the termination of his employment.

7 80. As a proximate result of the above-described conduct, Mr. Pinheiro
8 has and will suffer damages in an amount that has not yet been ascertained but is
9 believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for relief to amend this
10 complaint to allege the true amount when the same has been ascertained.

11 81. As a result of Defendants' actions, Mr. Pinheiro has been forced to
12 retain the law offices of Motschieder, Michaelides, Wishon, Brewer & Ryan, LLP to
13 prosecute this action. Plaintiff has incurred and will continue to incur reasonable
14 attorneys fees in prosecuting this action, which he is entitled to recover as a result of the
15 County's wrongful conduct as described in this cause of action.

16 WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

17 **EIGHTH CAUSE OF ACTION**

18 **(Improper Disclosure of Personal Information from Record –**
19 **Civil Code Section 1798.45(c), 1798.47, 1798.48, 3422 – County)**

20 82. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1
21 through 81, inclusive as though fully set forth herein.

22 83. During the relevant time periods, the County as a political
23 subdivision of the State of California which maintains an Office of the District
24 Attorney, is charged with the enforcement of law and order. Such records maintained
25 by the county include arrest records, investigative records relating to allegations and
26 claims of criminal and civil misconduct and other such records. It also obtains records
27 from other law enforcement agencies such as the City of Fresno in connection with its
28 ongoing investigations.

1 84. In the Fall of 2012 Mr. Pinheiro became aware that the County
2 provided arrest, citation and investigative information and records in its possession
3 regarding Mr. Pinheiro to Navarrette, Bandy and St. Marie without proper legal
4 authorization, a legal basis, or consent from Mr. Pinheiro. Navarrette, Bandy and St.
5 Marie had no legitimate interest in that information and thereafter disclosed it to Mr.
6 Pinheiro's family members, the public and the local media.

7 85. As a result of these improper disclosures, Mr. Pinheiro has suffered
8 great and irreparable harm and injury, including the loss of his job and the destruction of
9 his personal and professional reputations.

10 86. As a proximate result of the above-described conduct, Mr. Pinheiro
11 has and will suffer general damages in an amount that has not yet been ascertained but
12 is believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for relief to amend this
13 complaint to allege the true amount when the same has been ascertained.

14 87. As a result of Defendants' actions, Mr. Pinheiro has been forced to
15 retain the law offices of Motschiedler, Michaelides, Wishon, Brewer & Ryan, LLP to
16 prosecute this action. Plaintiff has incurred and will continue to incur reasonable
17 attorneys fees in prosecuting this action, which he is entitled to recover as a result of the
18 County's wrongful conduct as described in this cause of action

19 WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

20 **NINTH CAUSE OF ACTION**

21 **(Intentional Disclosure of Personal Information from Government Records –**
22 **– Navarrette, Bandy and St. Marie)**

23 88. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1
24 through 87, inclusive as though fully set forth herein.

25 89. During the relevant time periods, the County as a political
26 subdivision of the State of California which maintains an Office of the District
27 Attorney, is charged with the enforcement of law and order. Such records maintained
28 by the county include personnel records, arrest records, investigative records relating to

1 allegations and claims of criminal and civil misconduct and other such records. It also
2 obtains records from other law enforcement agencies such as the City of Fresno in
3 connection with its ongoing investigations.

4 90. In the Fall of 2012 Mr. Pinheiro became aware that the County
5 provided arrest, citation and investigative information and records in its possession
6 regarding Mr. Pinheiro to Navarrette, Bandy and St. Marie without proper legal
7 authorization, a legal basis, or consent from Mr. Pinheiro. Navarrette, Bandy and St.
8 Marie had no legitimate interest in that information and thereafter disclosed it to Mr.
9 Pinheiro's family members, the public and the local media.

10 91. At the time when these defendants intentionally disclosed the
11 information described above, they knew or should have known that such information
12 was obtained from personal information or records being maintained by a government
13 agency.

14 92. As a result of these improper disclosures, Mr. Pinheiro has suffered
15 great and irreparable harm and injury, including the loss of his job and the destruction of
16 his personal and professional reputations.

17 93. As a proximate result of the above-described conduct, Mr. Pinheiro
18 has and will suffer general damages in an amount that has not yet been ascertained but
19 is believed to be in excess of \$3,500,000.00. Mr. Pinheiro prays for relief to amend this
20 complaint to allege the true amount when the same has been ascertained.

21 94. As a result of these defendants' actions, Mr. Pinheiro has been
22 forced to retain the law offices of Motschiedler, Michaelides, Wishon, Brewer & Ryan,
23 LLP to prosecute this action. Plaintiff has incurred and will continue to incur
24 reasonable attorneys fees in prosecuting this action, which he is entitled to recover as a
25 result of the County's wrongful conduct as described in this cause of action.

26 95. In doing the acts alleged above, these individual defendants acted
27 intentionally and with improper motives. For these reasons, their actions were
28 oppressive, outrageous, willful, malicious and uttered and published with a reckless

disregard for their possible result so as to justify an award of punitive damages against each of the individual defendants.

WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

TENTH CAUSE OF ACTION

(Violation of Labor Code Section 432.7 - County)

96. Mr. Pinheiro incorporates the allegations set forth in paragraphs 1 through 95, inclusive as though fully set forth herein.

97. California Labor Code §432.7 (a) specifically prohibits “any employer,” including the County, from using arrest or detention records “as a factor” in any “condition of employment,” specifically referencing “termination.” An arrest, by itself, is not reliable evidence that a person has actually committed a crime.

98. Mr. Pinheiro’s termination was based, at least in part, on arrest or detention records, which Labor Code Section 432.7 specifically prohibits. Defendants’ actions as described above constitute the wrongful termination of Mr. Pinheiro’s employment.

99. As a proximate result thereof, Plaintiff suffered and continues to suffer substantial losses and lost earnings, bonuses, deferred compensation and other employment benefits in an amount according to proof, but believed to be in excess of \$3,500,000.00.

100. As a further proximate result of Defendants’ wrongful termination, Plaintiff has suffered and will continue to suffer severe emotional and mental distress including, without limitation, humiliation, embarrassment, anxiety, sleeplessness and other psychological damage in an amount according to proof.

101. Code of Civil Procedure §1021 provides that attorneys fees are recoverable in an action for which they are specifically provided by statute. Applicable statutes, including Labor Code Section 218.5 and related statutes as detailed below, provides that reasonable attorneys fees and costs are recoverable by the prevailing party. As a result of Defendants’ actions, Mr. Pinheiro has been forced to retain the law offices

1 of Motschiedler, Michaelides, Wishon, Brewer & Ryan, LLP to prosecute this action.
2 Plaintiff has incurred and will continue to incur reasonable attorneys fees in prosecuting
3 this action.

4 WHEREFORE, Plaintiff prays for relief as set forth below

5 **ELEVENTH CAUSE OF ACTION**

6 **(Intentional and Negligent Infliction of Emotional Distress – Individual**
7 **Defendants)**

8 102. Mr. Pinheiro incorporate the allegations set forth in paragraphs 1
9 through 101, inclusive as though fully set forth herein.

10 103. The individual defendants' actions as described above in the third
11 through sixth and ninth causes of action were done intentionally and with the intent to
12 inflict severe emotional distress upon Mr. Pinheiro, and did in fact cause Mr. Pinheiro to
13 suffer severe emotional distress.

14 104. As a proximate result of the individual defendants' intentional and
15 negligent infliction of emotional distress against Mr. Pinheiro, Mr. Pinheiro'
16 employment was terminated and he has suffered and continues to suffer substantial
17 losses incurred in seeking and performing substitute employment and in lost earnings,
18 bonuses, deferred compensation and other employment benefits in an amount according
19 to proof, but believed to be in excess of \$3,500,000.00.

20 105. As a further proximate result of the individual defendants actions
21 as described above, Mr. Pinheiro has suffered and will continue to suffer severe
22 emotional and mental distress including, without limitation, humiliation,
23 embarrassment, anxiety, sleeplessness and other psychological damage in an amount
24 according to proof.

25 106. The individual defendants committed the acts described above with
26 malice, fraud and oppression in conscious disregard of Mr. Pinheiro' rights. As a result,
27 Mr. Pinheiro is entitled to recover punitive damages in an amount sufficient to deter the
28 individual defendants from engaging further in such unlawful conduct.

1 WHEREFORE, Mr. Pinheiro prays for relief as set forth below.

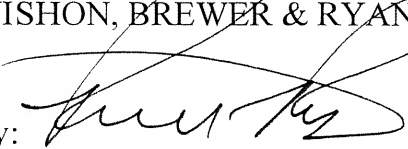
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- 4 1. For damages for past and future lost wages and compensation in an
5 amount according to proof on the causes of action set forth above;
- 6 2. For damages for emotional and mental distress and pain and
7 suffering in an amount according to proof;
- 8 3. For special damages;
- 9 4. For punitive damages against the individual defendants in an
10 amount necessary to deter Defendants from engaging in such actions in the future;
- 11 5. For reasonable attorneys fees on the causes of action for which
12 attorneys fees are recoverable;
- 13 6. For costs of suit; and
- 14 7. For such other and further relief as the court may deem just and
15 proper.

16 Dated: August 12, 2013

MOTSCHIEDLER, MICHAELIDES,
WISHON, BREWER & RYAN, LLP

17
18
19 By: 
20 Russell K. Ryan, Attorneys for
21 Plaintiff John Pinheiro
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, John Pinheiro, declare:

I am the Plaintiff in the above-entitled matter. I have read the foregoing
**VERIFIED COMPLAINT FOR WRONGFUL TERMINATION, RETALIATION
UNDER LABOR CODE SECTION 1102.5, DEFAMATION, INVASION OF
PRIVACY – FALSE LIGHT, INVASION OF PRIVACY – INTRUSION,
INVASION OF PRIVACY – PUBLIC DISCLOSURE OF PRIVATE FACTS,
FAILURE TO MAINTAIN RECORD PROPERLY, IMPROPER DISCLOSURE
OF PERSONAL INFORMATION FROM RECORD, INTENTIONAL
DISCLOSURE OF PERSONAL INFORMATION FROM GOVERNMENT
RECORD, VIOLATION OF LABOR CODE SECTION 432.7, AND
INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL
DISTRESS** and know the contents thereof. The same is true of our own knowledge,
except as to those matters which are therein stated upon information or belief, and as to
those matters, we believe them to be true.

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Executed on August 12, 2013, at Fresno, California.



John Pinheiro

EXHIBIT A

1 ORDER FOR DISCIPLINARY ACTION

2
3 TO: John Pinheiro, Personnel Services Manager
4 Personnel Services

5 YOU ARE HEREBY NOTIFIED that pursuant to Personnel Rule 10036,
6 Dismissal, you are dismissed from your County position, effective 10/2, 2012.

7 The basis for this disciplinary action is violation of the following Fresno County
8 Personnel Rules: 10062, Inefficiency; 10064, Insubordination; 10065, Neglect of duty;
9 10067, Dishonesty; 10069, Discourteous treatment of the public or other employees;
10 10074, Willful violation of any County code or lawful departmental or County regulation
11 or order; and 10076, Any conduct which bears some rational relationship to the
12 employment and is of a character that can reasonably result in the impairment or
13 disruption of County service.

14 EMPLOYMENT HISTORY AND STATUS

15 You were first hired by the Fresno County Personnel Management Department
16 on November 1, 2004, as a Personnel Services Manager. Your position was laterally
17 reclassified to the position of Labor Relations Manager from June 15, 2009 to June 25,
18 2012. You are once again a Personnel Services Manager and your job duties include
19 managing the labor relations division, acting as the County's chief spokesperson in
20 labor negotiations, and other related duties as assigned. As such, you have a very
21 public position and are the County's representative in its contacts with unions and
22 employee groups.

23 SYNOPSIS OF FACTS FROM WHICH DISCIPLINE IS IMPOSED

24 1. On numerous occasions beginning in October 2010 and most recently on
25 May 24, 2012, you have been directed not to have any contact with Personnel Tech

1 Vanessa Salazar during the work day and not to disclose any confidential information to
2 Ms. Salazar. On June 6, 2011, you signed the department's Confidentiality
3 Acknowledgement.

4 2. Each time that you were spoken to, you denied having any contact with
5 Ms. Salazar during the work day or providing confidential information to her. Initially,
6 you stated that you were simply friends with Ms. Salazar; more recently, you have
7 denied any relationship at all with her. When interviewed on July 12, 2012, you stated
8 that you knew her as an employee of this department but denied that she was a friend
9 or that you had ever had a more personal relationship with her. You denied carpooling
10 with Ms. Salazar and stated that you had only given her a ride to work on one or two
11 occasions during the past several years. Information provided by several employees
12 indicates that your responses were not honest.

13 3. Ms. Salazar told Larry Gomez, Sr. Personnel Analyst, Hollis Magill,
14 Personnel Analyst, and Amy Ryals, Personnel Tech, that the two of you carpooled
15 regularly. She told Mr. Gomez about a sports story she had heard on the radio during
16 the morning drive and noted that was all you listened to.

17 4. Ms. Salazar told Ms. Magill and Mr. Gomez that she obtained cell phones
18 on her plan for herself, her mother and you. She told Ms. Magill that she obtained the
19 phone for you after your wife found out about some calls between you and Ms. Salazar.
20 When interviewed on July 12, 2012, you denied receiving a phone belonging to Ms.
21 Salazar and stated that when you had two cell phones, they were both yours, but you
22 had not had both phones for some time. You initially stated that you did not know the
23 numbers for either of your phones. Later, you were able to provide one of your
24 numbers (209-914-2562) but still did not provide the number for your other phone. You
25 stated that the second phone was for the business your wife and her aunt run and you

1 only have the phone for incoming emergency calls after hours. However, I have
2 regularly seen you carrying and using two different cell phones and others have
3 commented on this practice as well.

4 5. Michael Stepke, Personnel Analyst, reported that when he worked in
5 Labor Relations (June 2006 to February 2007), he arrived early for work one morning
6 and saw that you also had arrived as you had placed items in your office. Mr. Stepke
7 received a phone call that appeared important so he went looking for you around the
8 floor. He checked the break room and then the adjoining conference room. As Mr.
9 Stepke opened the door to the conference room, the light came on and he heard the
10 sounds of someone moving quickly. You came to the door with Ms. Salazar right
11 behind you.

12 6. Jason Blanks, Personnel Analyst, reported that on or about January 9,
13 2009, he, Don Granz, Personnel Analyst, and Devon Benbrook, Sr. Personnel Analyst,
14 were in the basement at the County Plaza waiting for the freight elevator so they could
15 leave. When the elevator doors opened, you and Ms. Salazar were the only ones in the
16 elevator. Mr. Blanks described you both as looking "very surprised" to see the three of
17 them. Only one of you got off the elevator at the basement.

18 7. On September 28, 2009, Ms. Salazar exchanged emails with Rochelle
19 Ramos on her County email about the prior evening. During this exchange, Ms. Ramos
20 wrote, "o...I thought u took off with john...lol." Ms. Salazar responded, "That was earlier
21 in the day. Vicki and Rachel saw him..."

22 8. On July 19, 2010, Ms. Salazar sent an email to Eric Cervantes stating that
23 her cell phone had been taken off her desk. Her desk was in a secure area of the
24 Employee Benefits Office. Mr. Cervantes wrote that he was receiving texts from
25

1 someone who sounded like a boyfriend, asking personal questions about a wife and his
2 relationship with Ms. Salazar.

3 9. On July 19 and 21, 2010, Ms. Salazar exchanged emails on her County
4 email with Laura Martinez. She told Ms. Martinez that "the man" had her phone. Ms.
5 Martinez responded that "John" had called and asked about Ms. Salazar's whereabouts
6 and refers to John as married.

7 10. On October 22, 2010, at approximately 8:15 to 8:20 a.m., Debbie Zavala,
8 Personnel Tech, and Charlotte Tilkes, Personnel Analyst, observed you and Ms.
9 Salazar in a verbal altercation on the M Street side of the Plaza building.

10 11. During the summer of 2011, Emma Zavala, Personnel Tech, was walking
11 the stairs during her break. While walking between the 14th and 12th floors, she
12 observed Ms. Salazar near the stairwell; Ms. Salazar then pulled back and started using
13 her cell phone. At the same time, Ms. Zavala heard someone running down the stairs
14 below her and heard coins or keys rattling. She noted that she often heard this same
15 sound when you were walking near her. As she passed, Ms. Salazar asked if she was
16 walking the stairs; Ms. Zavala responded that she was and continued on. Ms. Salazar
17 remained between the 14th and 12th floors where there is no door. Ms. Zavala walked
18 by the 12th floor door and stopped. She heard you say, "I don't know. Is she on your
19 end?" and then saw the top of your head as you were walking up the stairs and talking
20 on your cell phone. You then quickly turned and walked back down the stairs and Ms.
21 Zavala left the stairwell.

22 12. On June 15, 2011, Ms. Salazar emailed Mr. Cervantes from her County
23 email asking him not to call or text her cell phone, indicating that some else had it. She
24 wrote that there was "a lot going on" and she knew he "didn't want drama" in his life.
25 Mr. Cervantes asked what number the caller had so he could block it and Ms. Salazar

1 responded "There [sic] calling from my number...the only other number I can think of is
2 392-6948..." That day, Ms. Salazar called her own cell phone (392-5396) from her desk
3 phone 75 times. In the midst of these calls, she called you on your personal cell phone
4 (219-914-2562) and shortly thereafter she received a call on her desk phone from a
5 second number on her plan, 392-6948. That same afternoon, you used your desk
6 phone to call her desk phone five times.

7 13. On June 16, 2011, Ms. Salazar called in sick and asked Ms. Ryals if she
8 had seen you and the scratches on your neck. Later, she texted Ms. Ryals that she had
9 gotten her phone back. The next day, Ms. Salazar came to work with a cut lip and a
10 bruise on her face. She told Ms. Ryals that she had been with you two nights before
11 when you became angry about text messages on her cell phone from someone named
12 Eric. Ms. Salazar stated that you and she got into a physical altercation in which she
13 scratched you on your neck and penis and you struck her in the face. I recall you
14 attending a budget hearing with the Board of Supervisors during the week of June 13-
15 17, 2011, and observing you to have significant scratches on your neck. You stated at
16 the time that they had come from your three-year-old child but the scratches appeared
17 to be larger and more spread apart than would be caused by a child.

18 14. During the fall of 2011, while negotiations with various labor groups were
19 ongoing, Ms. Salazar told Mr. Gomez details about the percentage decrease in salary
20 that was being proposed in these negotiations. She also told him the intended amount
21 of salary decrease for unrepresented employees, including herself. At the time, this
22 information had not been released to employees or the public.

23 15. Ms. Ryals stated that on or about December 13, 2011, Ms. Salazar told
24 her that you were working to reduce her pay cut because you did not want to see that
25 happen to her.

1 16. On January 6, 2012, Ms. Ryals saw you walking into the Plaza Building
2 carrying two cups from Starbucks. You placed the cups on the security desk in the
3 lobby, called someone on your cell phone and said, "15, now." When Ms. Ryals went to
4 the Employee Benefits office on the 14th floor a few minutes later, Ms. Salazar had just
5 returned from the stairwell and had a Starbucks Frappuccino, the same type of drink
6 she had seen you carrying.

7 17. Shortly after 8:00 a.m. on a day during the SEIU Local 521 strike (January
8 23-25, 2012), Paul Nerland, Personnel Services Manager, was driving behind you on L
9 street south of the County parking structure. Mr. Nerland observed Ms. Salazar get out
10 of your car south of Kern Street and begin walking toward the building. You then pulled
11 into the parking structure on the north side of Kern Street.

12 18. On January 26, 2012, Ms. Salazar told Ms. Ryals that you reported to her
13 a confidential conversation we had during a Personnel Services Managers Meeting
14 about the transfer of an employee from the Personnel office to the CAO to replace
15 Brandi Orth. Ms. Magill reported that after several Managers Meetings, Ms. Salazar told
16 her that you had called her and told her what was discussed in the meetings. One
17 example was when we discussed in the Managers Meeting that department staff should
18 be limited to 200 hours of leave in a year. Ms. Salazar also told Ms. Magill that another
19 employee, Sr. Personnel Analyst Rosie Garcia, was going to retire months before this
20 was announced. Again, Ms. Salazar said she heard this from you.

21 19. On February 23, 2012, both you and Ms. Salazar were late to work. Ms.
22 Salazar told Ms. Ryals that I had checked to see what time you and she came in. She
23 stated that she had called you and you were very angry that I would be checking on a
24 manager.

1 20. In or about March 2012, while you, Che Johnson (the County's outside
2 counsel) and I were in Sacramento discussing future hearings before the Public
3 Employment Relations Board (PERB), I noted that Mr. Nerland may not be available on
4 future hearing dates because he was interviewing for an outside position. You asked if
5 Mr. Nerland was looking for another job and I specifically directed you not to share that
6 information because it was confidential. This directive was repeated by Mr. Johnson.
7 However, Mr. Gomez stated that Ms. Salazar told him that her friend (as she often
8 referred to you) told her that Mr. Nerland was leaving the County and going to work
9 elsewhere. She explained to Mr. Gomez that I had given this information to you and
10 you had given it to her.

11 21. When interviewed, you denied sharing this information with anyone. You
12 stated that it was common knowledge that Mr. Nerland had been looking for another job
13 for years and that you had heard this from both Greg Borboa and Kevin Fries. Mr.
14 Nerland confirmed that he told only me about this new job opportunity; I told only you
15 and Mr. Johnson. The conversations Mr. Nerland had with Mr. Borboa and Mr. Fries
16 occurred in December 2006 and involved the only other time he has interviewed with an
17 outside employer; Mr. Fries left the County in October 2009.

18 22. On March 20, 2012, during a Managers Meeting, we discussed various
19 changes to the Personnel Division, including the elimination of a vacant analyst position
20 in exchange for two new personnel tech positions. I specifically directed that the
21 information be kept confidential. On April 3, 2012, I sent an email authorizing the
22 release of this information as the draft agenda containing this item had been released.
23 On April 4, 2012, Mr. Nerland sent an email to his staff regarding the agenda item. Ms.
24 Salazar told Ms. Ryals and Ginella Quiroz, Personnel Tech, that she knew this was
25

1 coming for a while but could not say anything because it was not yet official. Ms.
2 Salazar was upset that "her" analyst position was being eliminated.

3 23. On March 26, 2012, you received a counseling memo due to your
4 inappropriate and argumentative demeanor when I attempted to discuss with you the
5 level of documentation required for reimbursement of expenses during work-related
6 travel.

7 24. In April 2012, when Mr. Gomez spoke to Ms. Salazar about again being
8 late to work, she stated that she would have to talk to you about it as you were running
9 late.

10 25. On April 25, 2012, you left the office at 10:00 with the plan to leave Fresno
11 around noon to travel to Sacramento for a PERB hearing on April 26-27. You were
12 supposed to contact Mr. Johnson upon your arrival so that the two of you could prepare
13 for the hearing. When I contacted Mr. Johnson around 7:00 p.m., he had not heard
14 from you. You finally contacted me and Mr. Johnson the next morning, at which time
15 you were distracted and talking/texting repeatedly on your cell phone. You had no
16 explanation for your failure to contact Mr. Johnson or me the night before.

17 26. Ms. Salazar was on annual leave April 27 through May 3, 2012. You
18 requested annual leave on April 30 and May 1 and then called in sick on May 2-3. You
19 and Ms. Salazar were both out of the office on the same days on 25 occasions between
20 April 18, 2011 and May 9, 2012.

21 27. On May 7, 2012, Ms. Salazar played a voice mail message for Ms. Ryals
22 that she stated was from your wife. Ms. Ryals heard a woman speaking in an angry
23 tone of voice that Ms. Salazar was destroying her family and that this was going on "day
24 after day, week after week, month after month." Ms. Salazar laughed and said "more
25 like year after year." Ms. Salazar told Ms. Ryals that you said you could now leave your

1 wife because she knew about your relationship with Ms. Salazar. Ms. Salazar also told
2 Ms. Ryals that because your wife had found out "again", she would have to change
3 phone numbers; she provided her new number as 321-1202. County phone records
4 show that on May 7, 2012, your desk phone was used to call your wife's work phone 28
5 times and her house phone another 15 times, a significant increase over your prior calls
6 to these numbers.

7 28. Also on May 7, 2012, Ms. Salazar's received an email at her County email
8 address from AT&T, confirming number changes for two cell phones on her plan: from
9 392-5396 to 321-1202 and from 392-6948 to 321-4647. Records from Ms. Salazar's
10 desk phone show that she called 392-6948, a total of 1313 times between March 8,
11 2011 and April 25, 2012. There were 43 days on which 10 or more calls were placed,
12 including August 18, 2011 (44 calls), December 22, 2011 (59 calls), and February 17,
13 2012 (38 calls). She then used her desk phone to call the new number (321-4647) 80
14 times during the period of May 8 to 24, 2012.

15 29. Ms. Magill reported that she and Ms. Quiroz go to the same hairdresser
16 and Ms. Salazar goes to a hairdresser in the same salon. While there, Ms. Magill has
17 heard comments about your relationship with Ms. Salazar from the hair dressers.
18 During May 2012, Ms. Magill's hairdresser said, "So, did you hear what happened? The
19 wife found out!"

20 30. On May 24, 2012, I received a complaint about you from Public Defender
21 Ken Taniguchi. Public Defender management had spoken with you about a problem
22 they were having with Franz Criego, a Deputy Public Defender and president of the
23 Professional Association of County Employees. Mr. Taniguchi reported that shortly
24 afterwards Mr. Criego sent an email with references to the issues they had discussed
25 with you.

1 31. Throughout July 2012, issues arose regarding access to employees by
2 various certified and registered representatives. You were distracted and unable to
3 focus on the issues at hand to the point that I had to delegate matters to other staff
4 members to ensure appropriate responses were provided.

5 32. On July 26, 2012, at approximately 3:10 a.m., you were the victim of a
6 robbery in the area of Second and Belmont Avenues in Fresno. You told Fresno Police
7 Officers that you had left work just before 3:00 a.m. and missed the freeway 180 exit
8 because you were tired. You then got off at Belmont, heading east. You stated that
9 you were falling asleep and so you turned south on Second, made a U turn and parked
10 at the curb. You reported that a man got into your car directly behind you and a woman
11 got in the front passenger seat. They directed you to back into an alley and then took
12 your money, credit cards, two cell phones and car keys before leaving. You flagged
13 down a police car and reported the incident.

14 33. According to the police report, the woman involved in the robbery reported
15 that you had waved her over and invited her into your car. She also reported that you
16 gave her money after soliciting her for a sex act however she stated no sexual activity
17 had occurred. In preparing for the prosecution of this case, the District Attorney's Office
18 obtained prior reports indicating that you had been cited in 1987 for soliciting an act of
19 prostitution and in 2001 for loitering for prostitution. When interviewed on July 12, 2012,
20 you stated that you had never been arrested in your life. You then stated that you had
21 never been arrested, but if you had, you were not aware of it.

22 34. The DA's office also received two additional reports by the Fresno Police
23 Department, both involving complaints against you for petty theft by two local
24 restaurants. On October 19, 2011, Fresno Police Officer Anthony Dewall and Capt.
25 Rick Hill of the Fresno Sheriff's Department were having lunch at the Subway Sandwich

1 Shop near the Plaza Building and Capt. Hill stated that the owner had reported to him
2 that a person with your description had in the past bought a sandwich and then taken
3 chips and/or sodas without paying for them. You then came into the restaurant, spoke
4 with Capt. Hill and purchased a sandwich. Officer Dewall and Capt. Hill then watched
5 you go to the self-serve area and take two bags of chips and a soda and then leave.
6 Officer Dewall confirmed with the owner that you had ordered and paid for a sandwich
7 and declined the chips and drink.

8 35. Fresno Police Officer Tamara Pennington wrote a report about a follow-up
9 investigation she conducted after Capt. Hill stated that the owner of Quizno's on Kern
10 St. also reported that you had taken chips without paying. Quizno's employees and the
11 owner observed you taking chips you did not pay for on at least three separate
12 occasions in late 2010 or early 2011. The owner confronted you, took back the chips
13 and told you not to return to her restaurant. She was aware that you were a County
14 employee with "a good job". When asked about these incidents by Officer Pennington,
15 you stated that they were the result of "misunderstandings" or union tactics to discredit
16 you as a negotiator for the County of Fresno. You could not explain why the employees
17 and owners of these restaurants would make up stories as they had nothing to do with
18 the County's labor negotiations. Ultimately, the owner of Subway declined to press
19 charges and the incident at Quizno's was beyond the statute of limitations so no
20 charges were filed against you.

21 36. You were not at work for the County during the night of July 25-26, 2012.
22 You did not use your computer, phone or key card after 5:00 on July 25 or before 8:00
23 on July 26. You have not disclosed to me any outside employment so that a
24 determination could be made regarding possible conflict with your County position.
25 Clearly, any outside employment that causes you to be out until 3:00 a.m. when you are

1 expected to be at work for the County between 8:00 a.m. and 5:00 p.m. would be
2 considered a conflict because of the negative impact it would have on your ability to
3 perform your duties. Further, even if your version of events was absolutely accurate,
4 your decision to park in that area at that time of night demonstrates very poor judgment
5 on your part. In doing so, you opened yourself—and, due to your position, the County—
6 to negative publicity while in the midst of negotiations with several bargaining groups,
7 including the Prosecutors Association. Based on the first-hand observations of FPD
8 Officer Dewall and Sheriff's Capt. Rick Hill and the investigation by FPD Officer
9 Pennington, I find that you engaged in acts of petty theft which brought discredit to you,
10 this Department and the County. Indeed, Officer Dewall's report had already been
11 obtained by the media.

12 37. On August 15, 2012, you were scheduled to represent the County in
13 further negotiations with SEIU beginning at 10:00 a.m. You called in three times to
14 instruct your staff to delay the start of negotiations ultimately saying that you would meet
15 them at the SEIU office at 11:30. When I spoke with you at approximately 10:40, you
16 stated that you were not asking for time off but had no explanation for why you were not
17 then at work.

18 38. As the Labor Relations Manager and the Personnel Services Manager
19 responsible for Labor Relations, you are expected to maintain a high degree of maturity,
20 integrity, loyalty, accountability and good judgment. Based on the above, I have
21 concluded that you have failed to meet these expectations. You have regularly
22 disappeared during the work day, have continued to be in contact with Ms. Salazar
23 during the work day despite my specific directives to the contrary and have disclosed
24 confidential information. Of greater concern is the dishonesty and lack of candor you
25 displayed during a personnel investigation. Further, you are the public face of the

1 County in its relationship with employees and their representatives. You have displayed
2 very poor judgment in your off duty activities, bringing discredit to you and, by
3 extension, the County. I cannot trust you to carry out the duties of your position and
4 have no alternative but to dismiss you as set forth above.

5 **YOU ARE FURTHER ADVISED** that you may appeal this Order to the Fresno
6 County Civil Service Commission by filing a signed statement of appeal in the Office of
7 the Commission, located in the Fresno County Plaza, Fourteenth Floor, not later than
8 fifteen (15) working days after the service of this Order upon you. If you prefer to file
9 your statement by mail, you may do so by sending your statement to Post Office Box
10 1962, Fresno, California 93718; such statement must be postmarked by the 15th
11 working day following service of this order. If you file a statement of appeal, you should:

- 12 (a) request a hearing;
- 13 (b) specify which of the above listed bases for discipline, if any, you believe
14 are not applicable;
- 15 (c) deny the allegations (by reference to paragraph numbers) you do not
16 believe to be true;
- 17 (d) provide your reasons for denying any allegations; and
- 18 (e) provide an explanation of any mitigating factors that you believe excuse
19 your conduct.

20 A copy of your statement of appeal must be provided to the County Counsel's
21 Office (attn: C. Basham), located in the Fresno County Plaza, Fifth Floor, and a
22 statement verifying that you have provided this copy must be submitted to the Civil
23 Service Commission along with your statement of appeal.

24 You have the right to appear at the hearing, to be represented by a lawyer, and
25 to provide evidence.

1 YOU ARE FURTHER ADVISED that failure to file an appeal or answer within the
2 time allowed or failure to appear at the hearing on the appeal may result in this Order
3 becoming final and in your being deemed to have consented to the disciplinary action.
4 The timely filing of an appeal and an answer is your personal responsibility. If you are
5 assisted by an attorney, union representative, or other individual or agency, you are still
6 personally responsible for ensuring that all requirements are met.

7 Any further information regarding your Civil Service Rights may be obtained at
8 the office of the Civil Service Commission.
9

10
11 Dated: 10/1/12

Beth Bandy
Beth Bandy, Director
Personnel Services